

1 MICHAEL C. BAUM (SBN 65158)
E-Mail: mbaum@rpblaw.com
2 ANDREW V. JABLON (SBN 199083)
E-Mail: ajablon@rpblaw.com
3 STACEY N. KNOX (SBN 192966)
E-Mail: sknox@rpblaw.com
4 RESCH POLSTER & BERGER LLP
1840 Century Park East, 17th Floor
5 Los Angeles, California 90067
Telephone: 310-277-8300
6 Facsimile: 310-552-3209
7 Attorneys for Plaintiff Fabric Selection,
Inc.
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11
12 FABRIC SELECTION, INC., a
California corporation,

13 Plaintiff,

14 vs.

15 ONE STEP UP, LTD, a New York
16 corporation; CITI TRENDS, INC., a
Delaware corporation; RAINBOW
17 APPAREL OF AMERICA, INC., a
Delaware corporation; ROSS STORES,
18 INC., a Delaware corporation;
GORDMANS STORES, INC., a
19 Delaware corporation; and DOES 1
through 10, Inclusive,

20 Defendant.
21

Case No. 2:15-CV-06022-RSWL (JCx)

**STIPULATED PROTECTIVE
ORDER**

Magistrate Judge:
Hon. Jacqueline Chooljian

Trial Date: None Set

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 **BASED UPON THE STIPULATION OF THE PARTIES, AND GOOD**
24 **CAUSE APPEARING, IT IS HEREBY ORDERED** that any person or party
25 subject to this Order – including, without limitation, the parties to this action, their
26 representatives, agents, experts and consultants, all third parties providing discovery
27 in this action, and all other interested persons with actual or constructive notice of
28 this Order – shall adhere to the following terms:

1 1. Proceedings and Information Governed. This Order shall govern any
2 document, information or other thing furnished by any party, including third parties,
3 to any other party in connection with the discovery and pre-trial phase of this action.
4 The information protected includes, but is not limited to, responses to requests to
5 produce documents or other things, documents or things produced in connection
6 with the lawsuit, responses to interrogatories, responses to requests for admissions,
7 deposition testimony and exhibits, and all copies, extracts, summaries, compilations,
8 designations and portions thereof (collectively “Information”). The Order does not
9 govern proceedings during trial nor does it prohibit either party from seeking a
10 Protective Order to govern proceedings during trial.

11 2. Designation of Information for Protection Under This Order. Any such
12 Information produced in this action that is reasonably believed by the producing
13 party to be non-public, proprietary or confidential may be designated as
14 “Confidential” or “Confidential - Attorneys’ Eyes Only.” The appropriate
15 designation may be made by stamping or otherwise marking the Information prior to
16 production as follows: “Confidential” or “Confidential - Attorneys’ Eyes Only.” In
17 the case of written material, documents or tangible items, the appropriate
18 designation shall be made at the time the producing party makes the Information
19 available for inspection or provides a copy of the Information to the receiving party.
20 In the case of deposition testimony, a party seeking to invoke the protection of this
21 Order shall give notice thereof at the deposition or within fifteen (15) days after
22 receipt of the deposition transcript. Deposition testimony shall be treated as
23 “Confidential - Attorneys’ Eyes Only” until expiration of the fifteen (15) day notice
24 period.

25 In the event such notice is given, the appropriate provisions of paragraphs 12
26 and 13 below shall apply. In the event that Information is provided under this
27 Order, whether in written, oral or other form, without any designation of
28 confidentiality, such Information may be designated “Confidential” or “Confidential

1 - Attorneys' Eyes Only" at a later time, and shall be treated as "Confidential" or
2 "Confidential - Attorneys' Eyes Only" by all parties hereto as though such
3 Information had been designated "Confidential" or "Confidential - Attorneys' Eyes
4 Only" when originally provided, except to the extent that such Information has
5 already been disclosed to persons not subject to this Order. In the event that the
6 Information referred to immediately above is disclosed to persons not subject to this
7 Order, the party that made such disclosure shall identify such recipients to the other
8 party in this action, unless such disclosure is subject to the attorney client privilege
9 or attorney work product doctrine.

10 3. Disclosure of Confidential Information. As a general guideline,
11 Information marked "Confidential," as distinguished from "Confidential -
12 Attorneys' Eyes Only," shall include Information that may be disclosed by the
13 parties for the purposes of the litigation, but which must be protected against
14 disclosure to third parties. Once designated as "Confidential," such designated
15 Information shall, absent a specific order by this Court, be used by the parties solely
16 in connection with this litigation, and not for any business, competitive, or
17 governmental purpose or function, and such Information shall not be disclosed to
18 anyone except as provided herein. Information marked "Confidential," as
19 distinguished from "Confidential - Attorneys' Eyes Only," may be disclosed by the
20 receiving party to the following recipients only:

21 (a) The outside litigation attorneys of record in this action, and any outside
22 attorneys retained by the parties in this action to consult on the litigation, and their
23 respective associates, clerks, legal assistants, stenographic and support personnel,
24 and organizations retained by such attorneys to provide litigation support services in
25 this action and the employees of said organizations;

26 (b) Independent experts and consultants retained in this action by the
27 attorneys of record, and the employees of such experts and consultants who are
28 assisting them;

- 1 (c) The officers, directors and employees of a party;
- 2 (d) The Court and its respective clerks and support personnel;
- 3 (e) Court reporters employed in connection with this action;
- 4 (f) The persons permitted under paragraph 11 below; and
- 5 (g) Such other persons as hereafter may be designated by written
- 6 agreement of all parties in this action or by Order of the Court, such Order obtained
- 7 on noticed motion (or on shortened time as the Court may allow), permitting such
- 8 disclosure.

9 4. Confidential - Attorneys' Eyes Only Information. As a further general
10 guideline, Information designated as "Confidential - Attorneys' Eyes Only" shall be
11 Information of a proprietary business or technical nature that might be of value to a
12 competitor or potential customer of the party or non-party holding the proprietary
13 rights thereto, and that must be protected from disclosure. Once designated as
14 "Confidential - Attorneys' Eyes Only," such designated Information shall, absent a
15 specific order by this Court, be used by the parties solely in connection with this
16 litigation, and not for any business or governmental purpose or function, and such
17 Information shall not be disclosed to anyone except as provided herein. All
18 Information designated "Confidential - Attorneys' Eyes Only" is included within the
19 meaning of "Confidential" Information as used in this Order, and all the provisions
20 set forth in the Order that apply to "Confidential" Information also apply to material
21 designated "Confidential - Attorneys' Eyes Only." However, Information
22 designated "Confidential - Attorneys' Eyes Only" shall not be disclosed to persons
23 referred to in subparagraph 3(c) of this Order, except as provided in paragraph 11
24 (*i.e.*, the authors or addressees of the document). In-house counsel and staff are
25 specifically excluded from access to Information designated "Confidential -
26 Attorneys' Eyes Only."

27 5. Reference to Information. Notwithstanding any provision in this
28 Stipulation and Protective Order, nothing in this Order shall prohibit or otherwise

1 restrict counsel from referring to in a general way, relying on, or evaluating
2 “Confidential” or “Confidential - Attorneys’ Eyes Only” Information in the course
3 of advising a party client with respect to this lawsuit, provided, however, that
4 counsel shall not disclosed the specific substance or content of any “Confidential” or
5 “Confidential - Attorneys’ Eyes Only” Information if such disclosure would violate
6 this Order. However, it is expressly understood and agreed that, regardless of any
7 claim that such information is “Confidential” or “Confidential - Attorneys’ Eyes
8 Only”, Plaintiff’s counsel may disclose to its clients: (1) the number of units
9 purchased and sold (at wholesale and/or retail level); (2) claimed gross revenue; (3)
10 the per unit cost of goods (at wholesale and/or retail level); (4) per unit claimed
11 gross profits; (5) claimed deductions beyond cost of goods attributable to the sale of
12 the challenged goods (at whole and/or retail level).

13 6. Declarations. Each person referred to in paragraph 3 hereof, except
14 persons falling under paragraph 3(a), 3(d), 3(e) and clerical and stenographic
15 personnel falling within paragraph 3(b) above, to whom Information designated
16 “Confidential” or “Confidential - Attorneys’ Eyes Only” is to be given, shown,
17 disclosed, made available or communicated in any way, shall execute a declaration,
18 in the form attached hereto as Exhibit A, agreeing to be bound by the terms of this
19 Order, and a copy of the declaration shall be maintained by outside litigation
20 counsel for the party making such disclosure. Persons falling under paragraph 3(a)
21 shall read a copy of this Stipulation and Order and sign and date it to signify they
22 have read, understood and agreed to be bound by its terms and provisions.

23 7. Use. “Confidential” or “Confidential - Attorneys’ Eyes Only”
24 Information shall be used by the persons to whom it is disclosed solely in
25 preparation for trial and trial of this lawsuit, and any appellate proceeding related
26 thereto. “Confidential” or “Confidential - Attorneys’ Eyes Only” Information shall
27 not be used by such persons for any business, governmental or other purpose, unless
28 agreed to in writing and signed by all parties to this action or as authorized by

1 further order of the Court. No person who receives “Confidential” or “Confidential
2 - Attorneys’ Eyes Only” Information shall disclose it to any person not entitled
3 under this Order to receive it.

4 8. Court Procedures.

5 (a) Subject to and in accordance with the provisions of Central District
6 Local Rule 79-5, pleadings which contain or annex Information designated under
7 this Order as “Confidential” or “Confidential - Attorneys’ Eyes Only” Information
8 shall be filed in sealed envelopes or other appropriate containers on which shall be
9 endorsed the title of the action to which they pertain, an indication of the nature of
10 the contents of the sealed envelope or other container, the word(s)
11 “CONFIDENTIAL,” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” and a
12 statement substantially in the following form:

13 (b) This envelope is sealed pursuant to Order of the Court, contains
14 Confidential or Confidential - Attorneys’ Eyes Only Information and is not to be
15 opened nor the contents revealed except by Order of the Court.

16 (c) Any Court hearing which refers to or describes “Confidential” or
17 “Confidential - Attorneys’ Eyes Only” Information shall in the Court’s discretion be
18 held *in camera*;

19 (d) The filing of a document under seal pursuant to this paragraph 8 does
20 not restrict in any way a party’s right to use or disseminate any part of the document
21 that does not contain, annex or expressly refer to Information designated
22 “Confidential” or “Confidential - Attorneys’ Eyes Only” under this Order.

23 (e) If, after complying with the foregoing, the Court refuses to file the
24 materials under seal, the Receiving Party may file materials otherwise designated as
25 “Confidential” or “Confidential - Attorneys’ Eyes Only” in the public record. Such
26 filing shall be without prejudice to the Designating Party filing a Motion to seal the
27 same.

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1 9. Limitations on Scope of Protective Order.

2 (a) The restrictions and obligations set forth herein shall not apply to any
3 information that (a) the parties agree or the Court rules should not be designated
4 confidential Information; (b) the parties agree, or the Court rules, is already public
5 knowledge; (c) the parties agree, or the Court rules, has become public knowledge
6 other than as a result of disclosure by the receiving party, its employees, or its
7 agents in violation of this Protective Order; or (d) has come or shall come into the
8 receiving party's legitimate knowledge independently of the production by the
9 producing party.

10 (b) The restrictions and obligations herein shall not be deemed to prohibit
11 discussions of any confidential Information with anyone if that person already has or
12 obtains legitimate possession thereof.

13 (c) Nothing herein shall be construed to prevent disclosure of confidential
14 Information if such disclosure is required by order of the Court.

15 (d) Nothing herein is intended to prohibit or restrict in any way a party's or
16 its counsel's use or distribution of its own information.

17 (e) This Protective Order shall be without prejudice to the right of any
18 party to oppose production of any information for lack of relevance or any other
19 ground other than the mere presence of confidential Information. The existence of
20 this Protective Order shall not be used by any party as a basis for discovery that is
21 otherwise not proper under the Federal Rules of Civil Procedure.

22 (f) Nothing in this Protective Order shall bar counsel from rendering
23 advice to their clients with respect to this litigation and, in the course thereof,
24 relying upon any information designated as Confidential Information or
25 Confidential – Attorneys' Eyes Only Information, provided that the contents of the
26 information shall not be disclosed except as set forth above

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(g) Nothing herein shall prejudice the right of any party to object to the production of any Produced Material on the grounds that such material is protected as privileged or as attorney work product.

10. Removal. A party may seek to downgrade or remove a confidentiality designation applied under this Order. In such event, the following procedure shall be utilized:

(a) The party or person seeking such downgrade or removal shall give counsel of record for the other party written notice thereof, supported by reasons therefor specifying the Information as to which such downgrade or removal is sought;

(b) If the parties cannot reach agreement concerning the matter within ten (10) days after delivery (or in the case of mailing, thirteen (13) days thereafter) of the notice, or such shorter time as the Court may allow, then the party seeking the downgrade or removal may file and serve a motion for an order of this Court for appropriate relief. Any such motion shall be set for the earliest possible date on the Court's law and motion calendar, and shall not be continued without the consent of all parties or order of the Court. In any such motion, the party seeking to protect the Information bears the burden to establish the appropriateness of the protection or degree of protection sought.

11. Disclosure to Author or Addressee. Nothing herein shall prohibit a party, or its counsel, from disclosing Information that has been designated as "Confidential" or "Confidential - Attorneys' Eyes Only" Information to persons who are authors or addressees of such Information.

12. Depositions. Any deposition reporter who takes down or receives "Confidential" or "Confidential - Attorneys' Eyes Only" at a deposition shall be given a copy of this Order. In addition, all deposition testimony and exhibits designated either as "Confidential" or "Confidential - Attorneys' Eyes Only" shall be bound in a separate transcript, and clearly marked on each page either

1 “Confidential” or “Confidential - Attorneys’ Eyes Only.” If counsel, pursuant to the
2 provisions of Paragraph 2 above, designates any deposition testimony
3 “Confidential” or “Confidential - Attorneys’ Eyes Only” within the fifteen (15) day
4 period after receiving the deposition transcript, counsel shall specifically identify in
5 writing which portions are to be “Confidential” or “Confidential - Attorneys’ Eyes
6 Only” and shall send such writing to counsel for all parties involved in the action.
7 Counsel for each party shall then be responsible for marking, as either
8 “Confidential” or “Confidential - Attorneys’ Eyes Only”, the appropriate pages of
9 the deposition transcript so identified.

10 13. Exclusion from Deposition. Whenever any Information designated as
11 “Confidential” or “Confidential - Attorneys’ Eyes Only” is to be discussed or
12 disclosed in a deposition, any party claiming such confidentiality may exclude from
13 the room any person who is not entitled to receive Information designated as
14 “Confidential” or “Confidential - Attorneys’ Eyes Only.”

15 14. Third Party Confidentiality Rights. In the event that Information in the
16 possession or control of a party involves the confidentiality rights of a non-party or
17 that its disclosure would violate a protective order issued in another action, the party
18 with possession or control of the Information will attempt to obtain the consent of
19 the non-party to disclose the Information under this Order. If the consent of the
20 non-party cannot be obtained, the party will notify the party seeking discovery of:
21 (a) The existence of the Information, without producing such Information and;
22 (b) The identity of the non-party (provided, however, that such disclosure of the
23 identity of the non-party does not violate any confidentiality obligations). The party
24 seeking discovery may then make further application to the non-party or seek other
25 means to obtain such Information including the right to seek an *in camera* review by
26 the judge or magistrate.

27 15. Subpoenas. In the event any person or party having possession,
28 custody or control of any “Confidential” or “Confidential - Attorneys’ Eyes Only”

1 Information receives a subpoena or other process or order to produce such
2 Information, the recipient of the subpoena shall advise the attorney for the party
3 issuing the subpoena that the Information being requested has been designated
4 “Confidential” or “Confidential - Attorneys’ Eyes Only” pursuant to a court order.
5 The attorney for the party receiving the subpoena shall promptly notify in writing
6 the attorneys of record of the party claiming such confidential treatment of the
7 Information sought by such subpoena or other process or order and shall promptly
8 furnish those attorneys of record with a copy of said subpoena or other process or
9 order. The attorney for the party claiming confidential treatment shall have 5
10 business days from the date of receipt of a copy of said subpoena (or other process
11 or order) to file a motion to quash or modify the subpoena, process or order. If
12 production of “Confidential” or “Confidential - Attorneys’ Eyes Only” Information
13 pursuant to the subpoena, process or order is required prior to the expiration of this 5
14 day period, the attorney for the party receiving the subpoena shall object in writing
15 to the production by stating that the Information sought has been designated
16 “Confidential” or “Confidential - Attorneys’ Eyes Only” pursuant to a court order.
17 The attorney for the party receiving the subpoena shall be under no obligation to file
18 any motion to quash or modify the subpoena or take any action other than to object
19 in writing to the production pending a court order compelling production of the
20 subpoenaed materials. If a motion to quash or modify the subpoena, process or
21 order is made by the party claiming confidential treatment, there shall be no
22 disclosure of the subject matter objected to, except sufficient to identify it for
23 purposes of the motion to quash, until the court in which the motion is brought has
24 ruled on the motion, and then only in accordance with the ruling so made. If the
25 party claiming confidential treatment does not file a motion to quash or modify the
26 subpoena within the 5 day period provided herein, the person or party receiving the
27 subpoena or other process or order shall be entitled to comply with it provided it has
28 fulfilled its obligations hereunder.

1 16. No Waiver. Neither the taking of nor the failure to take any action to
2 enforce the provisions of this Order, nor the failure to object to any designation or
3 any such action or omission, shall constitute a waiver of any right to seek and obtain
4 protection or relief, other than as specified herein, of any claim or defense in this
5 action or any other action including, but not limited to, the claim or defense that any
6 Information is or is not proprietary to any party, is or is not entitled to particular
7 protection, or that such Information embodies trade secrets or other confidential
8 material of any party. The procedures set forth herein shall not affect the rights of
9 the parties to object to discovery on grounds other than those related to trade secrets
10 or other proprietary information claims, nor shall it relieve a party of the necessity
11 of proper response to discovery devices.

12 17. Unauthorized Disclosure.

13 (a) If “Confidential” or “Confidential - Attorneys’ Eyes Only” Information
14 is disclosed to any person other than in the manner authorized by this Protective
15 Order (an “Unauthorized Person”), the party responsible for the unauthorized
16 disclosure, and any party with knowledge of the unauthorized disclosure shall,
17 immediately upon learning of such disclosure, inform the producing party of all
18 pertinent facts relating to such disclosure including, without limitation, the
19 identification of the “Confidential” or “Confidential - Attorneys’ Eyes Only”
20 Information disclosed and the Unauthorized Persons to whom the disclosure was
21 made.

22 (b) The party responsible for the unauthorized disclosure shall also
23 promptly take all reasonable measures to recover the “Confidential” or
24 “Confidential - Attorneys’ Eyes Only” Information disclosed without authorization
25 and to ensure that no further or greater unauthorized disclosure or use of such
26 Information is made by doing the following, without limitation, (i) promptly
27 informing the Unauthorized Person that the disclosed information contains
28 confidential Information and of the provisions of this Protective Order; (ii)

1 requesting that the Unauthorized Person sign an undertaking in the form attached as
2 Exhibit A (to be promptly provided to the producing party); and (iii) making best
3 efforts to retrieve all copies of confidential Information disclosed to the
4 Unauthorized Person. The producing party and party that disclosed the confidential
5 Information shall cooperate in good faith in this effort.

6 (c) Any person found to have made an impermissible use of any
7 confidential Information will be subject to, without limitation, appropriate civil
8 penalties, including contempt of court.

9 (d) No party shall be responsible to another party for disclosure of
10 "Confidential" or "Confidential - Attorneys' Eyes Only" Information under this
11 Protective Order if the information in question is not labeled or otherwise identified
12 as such in accordance with this Protective Order.

13 18. No Probative Value. This Stipulation and Protective Order shall not
14 abrogate or diminish any contractual, statutory or other legal obligation or right of
15 any party to this Order, as to any third party, with respect to any "Confidential" or
16 "Confidential - Attorneys' Eyes Only" Information. The fact that Information is
17 designated "Confidential" or "Confidential - Attorneys' Eyes Only" under this
18 Stipulation and Protective Order shall not be deemed to be determinative of what a
19 trier of fact may determine to be confidential or proprietary. This Order shall be
20 without prejudice to the right of any party to bring before the Court the question of:
21 (i) whether any particular material is or is not confidential; (ii) whether any
22 particular information or material is or is not entitled to a greater or lesser degree of
23 protection than provided hereunder; or (iii) whether any particular information or
24 material is or is not relevant to any issue of this case, provided that in doing so the
25 party complies with the foregoing procedures. Absent a stipulation of all parties, the
26 fact that Information has been designated confidential under this Stipulation and
27 Protective Order shall not be admissible during the trial of this action, nor shall the
28 jury be advised of such designation. The fact that any Information is disclosed, used

1 or produced in discovery or trial herein shall not be construed admissible, or offered
2 in any action or proceeding before any court, agency or tribunal as evidence of or
3 concerning whether or not such Information is confidential or proprietary.

4 19. Return of Information.

5 (a) Within sixty (60) days of final termination of this action, including any
6 and all appeals, each party and counsel for each party shall, at the producing party's
7 election, destroy or return all "Confidential" or "Confidential - Attorneys' Eyes
8 Only" Information to the party that produced the information, including any copies,
9 excerpts, and summaries thereof and has purged all such information from all
10 machine-readable media on which it resides, and shall certify to the other producing
11 party that all such information has been destroyed/returned. Notwithstanding the
12 foregoing, outside counsel for each party may retain one set of all pleadings, briefs,
13 memoranda, motions, expert reports, or other documents filed with the Court that
14 refer to or incorporate confidential Information, and will continue to be bound by
15 this Protective Order with respect to all such retained information. Further attorney
16 work product materials that contain confidential Information need not be destroyed,
17 but, if they are not destroyed, the person in possession of the attorney work product
18 will continue to be bound by this Protective Order with respect to all such retained
19 information.

20 (b) This Protective Order shall survive the termination of this action and
21 the Court shall retain jurisdiction to enforce its terms and to make such amendments
22 and modifications to this Protective Order as may be appropriate. Notwithstanding
23 the foregoing, a party may seek the written permission of the producing party or
24 further order of the Court with respect to dissolution or modification of this
25 Protective Order.

26 20. Effective Date. Upon the signing of this Stipulation and Protective
27 Order by the United States District Court Judge, or Magistrate Judge, this
28 Stipulation and Protective Order shall be effective as against all party signators to

1 the Stipulation for entry of this Stipulated Protective Order as of the date of such
2 signature of that party or party's representative, thereby rendering this Order
3 effective *nunc pro tunc* to the date of such party's signature.

4 21. Amendment. Either party may move the Court to amend this
5 Stipulated Protective Order at any time. Moreover, parties entering into this
6 Stipulated Protective Order will not be deemed to have waived any of their rights to
7 seek later amendment to this Order.

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9 IT IS SO ORDERED.

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11 /s/

12 Date: December 14, 2015

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Honorable Jacqueline Chooljian

EXHIBIT A**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court for the Central District of
 California on _____ [date] in the case of *Fabric Selection, Inc.*
v. One Step Up, LTD., et al., Case No. 2:15-CV-06022-RSWL (JCx). I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order and
 I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this litigation.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service in connection with this
 litigation or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____